

AMENDED IN ASSEMBLY APRIL 30, 2013

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1376

Introduced by Assembly Member Roger Hernández

February 22, 2013

An act to amend Sections 11018, 11435.30, 11435.35, 11435.40, and 11435.55 of, and to repeal Sections 11435.45 and 11435.50 of, the Government Code, and to amend Sections 4600 and 4620 of the Labor Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1376, as amended, Roger Hernández. Administrative adjudication: language assistance.

Existing law requires certain state agencies to provide language assistance in adjudicative proceedings. Existing law requires the State Personnel Board to establish, maintain, administer, and publish annually for these purposes an updated list of certified administrative hearing interpreters and medical examination interpreters it has determined meet certain minimum standards. Existing law requires the Department of Human Resources to designate the languages for which certification shall be established and to establish and charge fees for applications to take interpreter examinations and for renewal of certifications. Existing law authorizes the Department of Human Resources to remove the name of a person from the list of certified interpreters if any specified conditions occurs. Existing law authorizes a hearing agency to provisionally qualify and use another interpreter if a certified interpreter, as specified, cannot be present at the hearing.

This bill would allow the ~~California~~ Department of Human Resources, until December 31, 2018, to maintain and publish ~~the list~~ *lists* of certified administrative hearing and medical examination interpreters, as specified. This bill would require a reasonable fee to be collected from each interpreter seeking certification, to cover the reasonable regulatory costs of administering the program. The bill would modify the conditions under which an interpreter who is not included on one of the lists of certified interpreters may act as an interpreter.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11018 of the Government Code is
2 amended to read:

3 11018. Each state agency that is authorized by any law to
4 conduct administrative hearings but is not subject to Chapter 5
5 (commencing with Section 11500) shall nonetheless comply with
6 Sections 11435.20, 11435.25, and 11435.55 relative to the
7 furnishing of language assistance at the hearing.

8 SEC. 2. Section 11435.30 of the Government Code is amended
9 to read:

10 11435.30. (a) Until December 31, 2018, the ~~California~~
11 Department of Human Resources shall maintain and publish the
12 list of certified administrative hearing interpreters it has determined
13 meet the minimum standards in interpreting skills and linguistic
14 abilities in languages designated pursuant to Section 11435.40, as
15 of December 31, 2013. Any interpreter so listed may be examined
16 by each employing agency to determine the interpreter's knowledge
17 of the employing agency's technical program terminology and
18 procedures.

19 (b) Court interpreters certified pursuant to Section 68562, and
20 interpreters listed on the State Personnel Board's recommended
21 lists of court and administrative hearing interpreters prior to July
22 1, 1993, shall be deemed certified for purposes of subdivision (a).

23 (c) (1) The Administrative Director of the Division of Workers'
24 Compensation may establish, maintain, administer, and publish
25 annually an updated list of certified administrative hearing
26 interpreters who, based on testing by an independent organization
27 designated by the administrative director, have been determined

1 to meet the minimum standards in interpreting skills and linguistic
2 abilities in languages designated pursuant to Section 11435.40,
3 for purposes of administrative hearings conducted pursuant to
4 proceedings of the Workers' Compensation Appeals Board. The
5 independent testing organization shall have no financial interest
6 in the training of interpreters or in the employment of interpreters
7 for administrative hearings.

8 (2) A fee, as determined by the administrative director, shall be
9 collected from each interpreter seeking certification. The fee shall
10 not exceed the reasonable regulatory costs of administering the
11 testing and certification program and of publishing the list of
12 certified administrative hearing interpreters on the Division of
13 Workers' Compensation' Internet Web site.

14 (d) The Legislature finds and declares that the services described
15 in this section are of such a special and unique nature that they
16 may be contracted out pursuant to paragraph (3) of subdivision
17 (b) of Section 19130. The Legislature further finds and declares
18 that the services described in this section are a new state function
19 pursuant to paragraph (2) of subdivision (b) of Section 19130.

20 SEC. 3. Section 11435.35 of the Government Code is amended
21 to read:

22 11435.35. (a) ~~The California~~ *Until December 31, 2018, the*
23 Department of Human Resources shall maintain and publish the
24 list of certified medical examination interpreters it has determined
25 meet the minimum standards in interpreting skills and linguistic
26 abilities in languages designated pursuant to Section 11435.40, as
27 of December 31, 2013.

28 (b) Court interpreters certified pursuant to Section 68562 and
29 administrative hearing interpreters certified pursuant to Section
30 11435.30 shall be deemed certified for purposes of this section.

31 (c) (1) The Administrative Director of the Division of Workers'
32 Compensation may establish, maintain, administer, and publish
33 annually an updated list of certified medical examination
34 interpreters who, based on testing by an independent organization
35 designated by the administrative director, have been determined
36 to meet the minimum standards in interpreting skills and linguistic
37 abilities in languages designated pursuant to Section 11435.40,
38 for purposes of medical examinations conducted pursuant to
39 proceedings of the Workers' Compensation Appeals Board, and
40 medical examinations conducted pursuant to Division 4

(commencing with Section 3200) of the Labor Code. The independent testing organization shall have no financial interest in the training of interpreters or in the employment of interpreters for administrative hearings.

(2) A fee, as determined by the administrative director, shall be collected from each interpreter seeking certification. The fee shall not exceed the reasonable regulatory costs of administering the testing and certification program and of publishing the list of certified medical examination interpreters on the Division of Workers' Compensation's Internet Web site.

(d) The Legislature finds and declares that the services described in this section are of such a special and unique nature that they may be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130. The Legislature further finds and declares that the services described in this section are a new state function pursuant to paragraph (2) of subdivision (b) of Section 19130.

SEC. 4. Section 11435.40 of the Government Code is amended to read:

11435.40. (a) The Administrative Director of the Division of Workers' Compensation shall designate the languages for which certification shall be established under Sections 11435.30 and 11435.35. The languages designated shall include, but not be limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the Administrative Director finds that there is an insufficient need for interpreting assistance in these languages.

(b) The language designations shall be based on the following:

(1) The language needs of non-English-speaking persons appearing before the administrative agencies, as determined by consultation with the agencies.

(2) The cost of developing a language examination.

(3) The availability of experts needed to develop a language examination.

(4) Other information the department deems relevant.

SEC. 5. Section 11435.45 of the Government Code is repealed.

SEC. 6. Section 11435.50 of the Government Code is repealed.

SEC. 7. Section 11435.55 of the Government Code is amended to read:

11435.55. (a) An interpreter used in a hearing shall be qualified. A certified interpreter on any of the lists pursuant to

1 Section 11435.30 is presumptively qualified. If an interpreter on
2 any list made pursuant to Section 11435.30 cannot be present at
3 the hearing, the hearing examiner shall have discretionary authority
4 to provisionally qualify and use another interpreter pursuant to
5 subdivision (c).

6 (b) An interpreter used in a medical examination shall be
7 qualified. A certified interpreter on any of the lists pursuant to
8 Section 11435.35 is presumptively qualified. If an interpreter on
9 any list made pursuant to Section 11435.35 cannot be present at
10 the medical examination, the agency shall have discretionary
11 authority to provisionally qualify and use another interpreter
12 pursuant to subdivision (c) if that fact is noted in the record of the
13 medical evaluation.

14 (c) An interpreter not named on a list pursuant to Section
15 *11435.30 or 11435.35* may be provisionally qualified if both of
16 the following facts are found:

17 (1) Good cause exists to appoint a nonlisted interpreter.

18 (2) The interpreter is qualified to interpret the proceedings. In
19 determining whether the interpreter is qualified, the hearing
20 examiner or agency, as appropriate, shall consider all of the
21 following:

22 (A) Any interpreter examination or evaluation taken by the
23 interpreter and the results of this examination or evaluation.

24 (B) The interpreter's general education, language training,
25 interpreting training, and translation training.

26 (C) The interpreter's language teaching experience.

27 (D) The interpreter's prior experience interpreting in court
28 proceedings, administrative hearings, medical examinations, and
29 other settings.

30 (E) The interpreter's experience with written translation.

31 (F) Any training in professional ethics.

32 (G) The interpreter's training in applicable terminology.

33 (d) If any party objects to the qualifications of the proposed,
34 the objection shall be noted on the record of the hearing or
35 evaluation.

36 SEC. 8. Section 4600 of the Labor Code is amended to read:

37 4600. (a) Medical, surgical, chiropractic, acupuncture, and
38 hospital treatment, including nursing, medicines, medical and
39 surgical supplies, crutches, and apparatuses, including orthotic and
40 prosthetic devices and services, that is reasonably required to cure

1 or relieve the injured worker from the effects of his or her injury
2 shall be provided by the employer. In the case of his or her neglect
3 or refusal reasonably to do so, the employer is liable for the
4 reasonable expense incurred by or on behalf of the employee in
5 providing treatment.

6 (b) As used in this division and notwithstanding any other law,
7 medical treatment that is reasonably required to cure or relieve the
8 injured worker from the effects of his or her injury means treatment
9 that is based upon the guidelines adopted by the administrative
10 director pursuant to Section 5307.27.

11 (c) Unless the employer or the employer's insurer has
12 established or contracted with a medical provider network as
13 provided for in Section 4616, after 30 days from the date the injury
14 is reported, the employee may be treated by a physician of his or
15 her own choice or at a facility of his or her own choice within a
16 reasonable geographic area. A chiropractor shall not be a treating
17 physician after the employee has received the maximum number
18 of chiropractic visits allowed by subdivision (d) of Section 4604.5.

19 (d) (1) If an employee has notified his or her employer in
20 writing prior to the date of injury that he or she has a personal
21 physician, the employee shall have the right to be treated by that
22 physician from the date of injury if the employee has health care
23 coverage for nonoccupational injuries or illnesses on the date of
24 injury in a plan, policy, or fund as described in subdivisions (b),
25 (c), and (d) of Section 4616.7.

26 (2) For purposes of paragraph (1), a personal physician shall
27 meet all of the following conditions:

28 (A) Be the employee's regular physician and surgeon, licensed
29 pursuant to Chapter 5 (commencing with Section 2000) of Division
30 2 of the Business and Professions Code.

31 (B) Be the employee's primary care physician and has
32 previously directed the medical treatment of the employee, and
33 who retains the employee's medical records, including his or her
34 medical history. "Personal physician" includes a medical group,
35 if the medical group is a single corporation or partnership
36 composed of licensed doctors of medicine or osteopathy, which
37 operates an integrated multispecialty medical group providing
38 comprehensive medical services predominantly for
39 nonoccupational illnesses and injuries.

40 (C) The physician agrees to be predesignated.

(3) If the employee has health care coverage for nonoccupational injuries or illnesses on the date of injury in a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the employer is notified pursuant to paragraph (1), all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code. Disputes regarding the provision of medical treatment shall be resolved pursuant to Article 5.55 (commencing with Section 1374.30) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(4) If the employee has health care coverage for nonoccupational injuries or illnesses on the date of injury in a group health insurance policy as described in Section 4616.7, all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by the applicable provisions of the Insurance Code.

(5) The insurer may require prior authorization of any nonemergency treatment or diagnostic service and may conduct reasonably necessary utilization review pursuant to Section 4610.

(6) An employee shall be entitled to all medically appropriate referrals by the personal physician to other physicians or medical providers within the nonoccupational health care plan. An employee shall be entitled to treatment by physicians or other medical providers outside of the nonoccupational health care plan pursuant to standards established in Article 5 (commencing with Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(e) (1) When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, the employee submits to examination by a physician, he or she shall be entitled to receive, in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination.

(2) Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home

1 to the place of the examination and back at the rate of twenty-one
2 cents (\$0.21) a mile or the mileage rate adopted by the Director
3 of Human Resources pursuant to Section 19820 of the Government
4 Code, whichever is higher, plus any bridge tolls. The mileage and
5 tolls shall be paid to the employee at the time he or she is given
6 notification of the time and place of the examination.

7 (f) When at the request of the employer, the employer's insurer,
8 the administrative director, the appeals board, or a workers'
9 compensation administrative law judge, an employee submits to
10 examination by a physician and the employee does not proficiently
11 speak or understand the English language, he or she shall be
12 entitled to the services of a qualified interpreter in accordance with
13 conditions and a fee schedule prescribed by the administrative
14 director. These services shall be provided by the employer. For
15 purposes of this section, "qualified interpreter" means a language
16 interpreter certified, or deemed certified, pursuant to Article 8
17 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of
18 Division 3 of Title 2 of, or Section 68566 of, the Government
19 Code.

20 (g) If the injured employee cannot effectively communicate
21 with his or her treating physician because he or she cannot
22 proficiently speak or understand the English language, the injured
23 employee is entitled to the services of a qualified interpreter during
24 medical treatment appointments. To be a qualified interpreter for
25 purposes of medical treatment appointments, an interpreter is not
26 required to meet the requirements of subdivision (f), but shall meet
27 any requirements established by rule by the administrative director
28 that are substantially similar to the requirements set forth in Section
29 1367.04 of the Health and Safety Code. The administrative director
30 shall adopt a fee schedule for qualified interpreter fees in
31 accordance with this section. Upon request of the injured employee,
32 the employer or insurance carrier shall pay for interpreter services.
33 An employer shall not be required to pay for the services of an
34 interpreter who is not certified or is provisionally qualified unless
35 either the employer consents in advance to the selection of the
36 individual who provides the interpreting service or the injured
37 worker requires interpreting service in a language other than the
38 languages designated pursuant to Section 11435.40 of the
39 Government Code.

1 (h) Home health care services shall be provided as medical
2 treatment only if reasonably required to cure or relieve the injured
3 employee from the effects of his or her injury and prescribed by
4 a physician and surgeon licensed pursuant to Chapter 5
5 (commencing with Section 2000) of Division 2 of the Business
6 and Professions Code, and subject to Section 5307.1 or 5703.8.
7 The employer shall not be liable for home health care services that
8 are provided more than 14 days prior to the date of the employer's
9 receipt of the physician's prescription.

10 SEC. 9. Section 4620 of the Labor Code is amended to read:

11 4620. (a) For purposes of this article, a medical-legal expense
12 means any costs and expenses incurred by or on behalf of any
13 party, the administrative director, or the board, which expenses
14 may include X-rays, laboratory fees, other diagnostic tests, medical
15 reports, medical records, medical testimony, and, as needed,
16 interpreter's fees by a certified interpreter pursuant to Article 8
17 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of
18 Division 3 of Title 2 of, or Section 68566 of, the Government
19 Code, for the purpose of proving or disproving a contested claim.

20 (b) A contested claim exists when the employer knows or
21 reasonably should know that the employee is claiming entitlement
22 to any benefit arising out of a claimed industrial injury and one of
23 the following conditions exists:

24 (1) The employer rejects liability for a claimed benefit.

25 (2) The employer fails to accept liability for benefits after the
26 expiration of a reasonable period of time within which to decide
27 if it will contest the claim.

28 (3) The employer fails to respond to a demand for payment of
29 benefits after the expiration of any time period fixed by statute for
30 the payment of indemnity.

31 (c) Costs of medical evaluations, diagnostic tests, and
32 interpreters incidental to the production of a medical report do not
33 constitute medical-legal expenses unless the medical report is
34 capable of proving or disproving a disputed medical fact, the
35 determination of which is essential to an adjudication of the
36 employee's claim for benefits. In determining whether a report
37 meets the requirements of this subdivision, a judge shall give full
38 consideration to the substance as well as the form of the report, as
39 required by applicable statutes and regulations.

1 (d) If the injured employee cannot effectively communicate
2 with an examining physician because he or she cannot proficiently
3 speak or understand the English language, the injured employee
4 is entitled to the services of a qualified interpreter during the
5 medical examination. Upon request of the injured employee, the
6 employer or insurance carrier shall pay the costs of the interpreter
7 services, as set forth in the fee schedule adopted by the
8 administrative director pursuant to Section 5811. An employer
9 shall not be required to pay for the services of an interpreter who
10 is provisionally qualified unless either the employer consents in
11 advance to the selection of the individual who provides the
12 interpreting service or the injured worker requires interpreting
13 service in a language other than the languages designated pursuant
14 to Section 11435.40 of the Government Code.

O